



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 31527284

Date: AUG. 12, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an automotive glass manufacturer, seeks to classify the Beneficiary as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Beneficiary satisfied at least three of the initial evidentiary criteria, as required, the Petitioner did not show the Beneficiary's sustained national or international acclaim and demonstrate he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

### A. Evidentiary Criteria

Because the Petitioner has not claimed or established the Beneficiary’s receipt of a major, internationally recognized award, the Beneficiary must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined the Beneficiary met three of the claimed evidentiary criteria relating to judging at 8 C.F.R. § 204.5(h)(3)(iv), original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi).

The Director’s decision simply indicates the Beneficiary’s satisfaction of the three criteria mentioned above without explaining his determination. Although the record shows the Beneficiary’s experience in reviewing a research grant proposal and a journal article and authoring scholarly articles in professional publications, thereby meeting the judging and scholarly articles criteria, the record does not reflect the Beneficiary’s achievement of making original contributions of major significance in the field. Again, the Director did not explain, including identifying the evidence, which original contributions the Beneficiary made and how he determined them to be majorly significant. While we do not concur with the Director that the Beneficiary fulfilled at least three criteria, we will evaluate the totality of the evidence since the Director conducted a final merits determination, including the documentation relating to the original contributions of major significance criterion.<sup>1</sup>

---

<sup>1</sup> *See* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual>.

## B. Final Merits Determination

As indicated above, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim,<sup>2</sup> he is one of the small percentage at the very top of the field of endeavor, and his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>3</sup> In this matter, we determine the Petitioner has not shown the Beneficiary's eligibility.

In the initial cover letter, the Petitioner described the Beneficiary's education and employment background:

In 1994, [the Beneficiary] obtained a Bachelor of Science with Honors in Electronics and Communication Engineering from [redacted] in Egypt. He later obtained a Master of Science in Electronics and Communication Engineering from [redacted] in Egypt. . . . [The Beneficiary] then obtained his Doctor of Philosophy in Electrical and Computer Engineering from the [redacted]. . . .

[The Beneficiary] was employed as a Customer Support Electrical Engineer from 1996 to 1997 with the [redacted]. He also served as Graduate Teaching Assistant at the [redacted] Department of Computer Science, from 1999 – 2003. Contemporaneously with this teaching experience, [the Beneficiary] worked as a researcher in antenna engineering with the [redacted] Egypt, from 1997 to 2004.

Upon relocating to Canada, [the Beneficiary] worked as a Teaching Assistant, Research Assistant, and Post-Doctoral Fellow at the [redacted] ranging from 2004 to 2014. Following this experience, [the Beneficiary] worked as an engineer at [redacted] in 2015, and as an Antenna Design Engineer with [redacted] from 2015 to 2017. In October 2017, [the Beneficiary] joined [the Petitioner]. Currently, [the Beneficiary] serves as the leader of the Antenna and Connectivity Group, as well as the Group Leader for the Regional Connected Systems Group.

As discussed further below, the Beneficiary has conducted some review work, authored material, and shared his original works. However, in considering the totality of the evidence, the Petitioner has not demonstrated that the Beneficiary's achievements are reflective of a "career of acclaimed work in the

---

<sup>2</sup> *See* 6 USCIS Policy Manual, *supra*, at F.2(A)(1) (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" is "to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time").

<sup>3</sup> *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (instructing that USCIS officers should consider the petition in its entirety to determine eligibility according to the standard – sustained national or international acclaim and the achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor).

field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Furthermore, the Petitioner has not shown that the Beneficiary has risen to that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not established that the Beneficiary enjoys a career that meets this very high standard.

Regarding the Beneficiary’s service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22. The Petitioner provided two instances of the Beneficiary’s judging experience - a paper review for the [REDACTED] (2017) and a research grant review for [REDACTED] (2023). Here, the Petitioner did not establish that these two judging instances contributed to a finding that the Beneficiary has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. See H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act.

The Petitioner did not show, for example, how the Beneficiary’s limited experience in reviewing the works of others compares to others at the very top of the field. In addition, the Petitioner did not establish, for instance, that the Beneficiary garnered wide attention from the field based on his evaluation work. Moreover, serving as a judge or evaluator does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (stating that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard). Without evidence that sets the Beneficiary apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, the Petitioner has not shown that the Beneficiary’s narrow judging experience places him among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, authorship and publication do not automatically place one at the top of the field. The record reflects that the Petitioner presented evidence showing that the Beneficiary authored two book chapters and over a dozen journal/symposia articles from 2003. However, the Petitioner did not demonstrate that the Beneficiary’s publication record is consistent with having a career of acclaimed work, sustaining national or international acclaim, and being among the small percentage at the very top of his field. See H.R. Rep. No. at 59, section 203(b)(1)(A) of the Act, and 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not show the significance of the Beneficiary’s authorships or how his publications compare to others who are viewed to be at the very top of the field.<sup>4</sup>

---

<sup>4</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (providing that an example where evidence in the record may help in determining whether in a totality analysis that considers all of the evidence, the person is among the small percentage at the top of the field and has sustained national or international acclaim).

Moreover, the citation history or other evidence of the influence of written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that his work has been recognized and that others have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. Here, the Petitioner provided evidence of material downloads, views, and citations. However, the Petitioner did not offer evidence demonstrating the significance or relevance of those figures. For instance, the Petitioner did not compare the Beneficiary's numbers to those among the very top of the field or to show the Beneficiary's work received a level of interest in the field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. In addition, the Petitioner did not establish that the Beneficiary's metrics represent attention at a level consistent with being among that small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Similarly, the Petitioner did not show that the Beneficiary's presented material garnered him any national or international acclaim. *See* section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not demonstrate the significance of the Beneficiary's presentations or how they impacted the field consistent with a very high standard requiring the petitioner to submit more extensive documentation than that required for lesser classifications. *See* 56 Fed. Reg. at 30704.

Furthermore, at initial filing, the Petitioner submitted a letter claiming the Beneficiary "has been contributing meaningful to several technical development projects" and "has been listed as an inventor on three recently-filed United States Patent applications." However, the Petitioner did not provide corroborating evidence to support its assertions. In response to the Director's request for evidence (RFE), the Petitioner provide evidence showing that one of the patents, which listed the Beneficiary as one of the inventors, was approved after the filing of the petition. Eligibility must be established at initial filing. *See* 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner did not demonstrate that the Beneficiary's involvement with three recent patents with the Petitioner reflects a career of acclaimed work, sustaining national or international acclaim, and being among the small percentage at the very top of his field. *See* H.R. Rep. No. at 59, section 203(b)(1)(A) of the Act, and 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not show the significance of the Beneficiary's patents and pending patents, how they compare to others who are viewed to be at the very top of the field, or whether the Beneficiary garnered attention throughout the field consistent with sustained national or international acclaim.

In addition, the Petitioner provided several recommendation letters that summarized the Beneficiary's work. Although they praise the Beneficiary's work and personal traits, they do not contain sufficient information and explanation to show that he is viewed by the overall field, rather than by a solicited few, among the upper echelon or that he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor. In fact, the letters speculate on the prospective influence the Beneficiary's work will have on the field rather than already having influenced the field in a major way. For example, the Beneficiary's "innovations and expertise in antenna technology are poised to have a significant impact on people's lives" (K-S-), and "[t]his research will help connect the underserved communities and provide safer roads" (T-A-D-). Here, the Petitioner did not establish that the Beneficiary has made impactful or influential contributions in the greater field reflecting a career of acclaimed work in the field, garnering the

required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not establish how the Beneficiary's work resulted in widespread acclaim from his field, that he drew significant attention from the greater field, or that overall field considers him to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

The record contains some of the Beneficiary's student awards, such as a certificate of recognition from the [redacted] Student Conference for best poster (2007) and a certificate of appreciation from the [redacted] Graduate Students' Association for the GSA [redacted] (2010).<sup>5</sup> However, the Petitioner did not demonstrate that the Beneficiary's student awards place him among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). There is no indication the overall field recognizes these awards among the upper echelon rather than limited to students at the [redacted] USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Price*, 20 I&N Dec. at 954. The Petitioner did not demonstrate, for instance, that the Beneficiary competed against other accomplished individuals or how his academic awards compare to other renowned individuals within his field.

Further, the Petitioner presented evidence of the Beneficiary's membership with the Institute of Electrical and Electronics Engineers (IEEE) in 2023. However, the Petitioner did not show that the Beneficiary's recent membership resulted in sustained national or international acclaim or reflects "that small percentage who [has] risen to the very top of the field of endeavor." *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. §204.5(h)(2) and (3). The record, for instance, does not contain evidence showing that the Beneficiary received national or international recognition based on his membership with this association. Furthermore, the Petitioner did not establish that the Beneficiary distinguished himself from others in the field based on his IEEE membership, gaining national or international attention or placing him among the upper echelon in his field.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at \*5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at \*1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a

---

<sup>5</sup> The Petitioner also provided a [redacted] letter in response to the Director's RFE; however, the letter indicates the Beneficiary's receipt after the initial filing of the petition. *See* 8 C.F.R. § 103.2(b)(1).

baseball coach). In this case, the Petitioner has not shown the significance of the Beneficiary's work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59; *see also* section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that the Beneficiary is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.